

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Microsoft Licensing GP,

Plaintiff,

-against-

Yulong Computer Telecommunication
Scientific (Shenzhen) Co., Ltd.,

Defendant.

Index No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Microsoft Licensing GP (“Microsoft”), by and through its attorneys, for its Complaint against Defendant Yulong Computer Telecommunications Scientific (Shenzhen) Co., Ltd. (“Yulong”), alleges as follows:

NATURE OF THE ACTION

1. This is an action for breach of contract and account stated to recover monies Yulong owes Microsoft and to require Yulong to make its books and records available for audit.

2. Microsoft’s parent, Microsoft Corporation, is a worldwide leader in computer software, devices, services, and solutions for businesses and consumers. Among other things, it develops and licenses software for a broad array of computing devices, including, but not limited to, smartphones and tablets.

3. Yulong, among other things, manufactures and sells smartphones and other electronic devices.

4. Yulong and Microsoft entered into a Patent License Agreement for Microsoft Exchange Active Sync Protocol, which has an effective date of September 21, 2009 (“License Agreement”). Pursuant to the License Agreement, Yulong agreed to pay Microsoft a license fee. Yulong also agreed to keep and maintain complete and accurate books and records related to the License Agreement, and to make such books and records available for audit.

5. Yulong has failed, and continues to fail, to meet its obligations under the License

Agreement. This includes failing to make timely reports, failing to provide adequate audit information or to cooperate with auditor requests for information, and failure to pay the license fee it owes Microsoft.

PARTIES

6. Plaintiff Microsoft Licensing GP is a Nevada general partnership with its principal place of business at 6100 Neil Road, Suite 100, Reno, Nevada 89511. The partners in Microsoft Licensing GP are Microsoft Corporation and Microsoft Management LLC. Microsoft Corporation is a Washington corporation with its principal place of business in Redmond, Washington. Microsoft Management LLC is a Nevada limited liability company with its principal place of business in Redmond, Washington. Its sole member is Microsoft Corporation. Microsoft Licensing GP operates as the licensing arm of Microsoft Corporation.

7. Defendant Yulong is a Chinese company with its principal place of business in Shenzhen, Guangdong, P.R.C.

JURISDICTION AND VENUE

8. The Court has jurisdiction over this action under 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000, excluding interest and costs, and because Plaintiff is a citizen of the United States and Defendant is a citizen of the People's Republic of China.

9. Yulong has irrevocably consented to the exercise of personal jurisdiction by the United States District Court for the Southern District of New York.

10. Venue is proper within this District under 28 U.S.C. §§ 1391(b)(1) and (c)(2). Moreover, Yulong has irrevocably consented to the United States District Court for the Southern District of New York as the exclusive venue for all disputes arising out of the License Agreement.

ALLEGATIONS

11. An important reason for Microsoft Corporation's success in the technology industry is its annual investment of billions of dollars in product research and development. Microsoft's efforts have yielded one of the world's largest and most valuable patent portfolios.

12. In September 2009, Yulong and Microsoft entered into the License Agreement after an arms-length negotiation. Both Yulong and Microsoft are highly sophisticated businesses experienced in negotiating and drafting license agreements.

13. Pursuant to the License Agreement, Microsoft licensed certain patents to Yulong, which allowed Yulong to sell certain software integrated into smartphones and other electronic devices.

14. Also pursuant to the License Agreement, Yulong agreed to pay Microsoft a license fee. Despite its obligations under the License Agreement, Yulong has paid Microsoft only a small fraction of the license fee that Yulong owes Microsoft. The unpaid portion of the license fee includes amounts for which Microsoft already has invoiced Yulong, and amounts for which Microsoft cannot invoice Yulong because of Yulong's failure to provide Microsoft the royalty reports that the License Agreement obligates Yulong to provide.

15. In February 2014, Microsoft exercised its right under the License Agreement to have Yulong provide Microsoft's auditor with access to Yulong's books and records. Yulong has refused to give Microsoft's auditor access to information sufficient to allow Microsoft's auditor to audit Yulong's compliance with the terms and conditions of the License Agreement.

COUNT I: BREACH OF CONTRACT

16. Microsoft incorporates by reference as if fully set forth herein each of its allegations set forth above in Paragraphs 1 to 15.

17. As described above, the License Agreement requires Yulong to pay Microsoft a license fee, and to make available for audit books and records that contain information sufficient to verify Yulong's compliance with the License Agreement.

18. Microsoft has fully complied with its obligations under the License Agreement.

19. By failing to pay the great majority of the license fee it owes Microsoft, and by failing to make information available to Microsoft's auditors that is adequate to allow an audit of Yulong's compliance with the License Agreement, Yulong has breached the License Agreement.

20. As a direct and proximate result of Yulong's conduct, Microsoft has been damaged in an amount that exceeds \$75,000, plus interest at the rate set forth in the License Agreement.

COUNT II: ACCOUNT STATED

21. Microsoft incorporates by reference as if fully set forth herein each of its allegations set forth above in Paragraphs 1 to 20.

22. Microsoft sent Yulong invoices for a portion of the license fee that Yulong owes Microsoft under the License Agreement. Yulong has had those invoices in its possession for several years, and has not disputed them. Yulong's payment is long overdue.

23. Yulong owes Microsoft full payment for the invoiced-but-unpaid portion of the license fee due under the License Agreement, plus interest at the rate set forth in the License Agreement.

PRAYER FOR RELIEF

WHEREFORE, by virtue of the acts complained of above, Microsoft demands judgment in its favor and against Yulong:

- a. awarding monetary damages, in an amount to be determined at trial, plus interest at the rate set forth in the License Agreement, for Yulong's breach of the License Agreement;
- b. awarding Microsoft all costs and expenses related to its audit of Yulong's compliance with the terms of the License Agreement;
- c. awarding pre- and post-judgment interest;
- d. requiring Yulong to make available to Microsoft's auditors books and records that contain information sufficient to determine Yulong's compliance with the License Agreement; and

e. such other and further relief as this Court may deem just and proper.

Dated: New York, New York
June 26, 2015

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/ Richard S. Goldstein

Richard S. Goldstein

51 W 52nd Street
New York, New York 10019-6142
Tel: (212) 506-5000
Fax: (212) 506-5151
Email: rgoldstein@orrick.com

Mark S. Parris (*pro hac vice* admission motion to
be filed upon receipt of index number)
ORRICK, HERRINGTON & SUTCLIFFE LLP
701 5th Avenue
Suite 5600
Seattle, WA 98104-7097
Tel: (206) 839-4300
Fax: (206) 839-4301
Email: mparris@orrick.com

Attorneys for Plaintiff
Microsoft Licensing GP